

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 191 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NANUBHAI SUKHLAL KHOJA

Versus

CHANDUBEN KANJIBHAI BAROT

Appearance:

MR SK JHAVERI for Petitioner

MR SURESH M SHAH for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 21/02/97

ORAL JUDGEMENT

1. The petitioner (original defendant-tenant) has filed this Civil Revision Application against the judgment and order dated 14/2/1981 rendered by the learned Extra Assistant Judge, Ahmedabad (Rural) in Civil Misc. Appeal No. 117 of 1980 (Regular Civil Appeal No. 117 of 1980) by virtue of the provisions contained in sec. 29(2) of the Bombay Rents, Hotel and Lodging House

Rates Control Act, 1947 (for short 'the Rent Act').

2. The facts, briefly stated would indicate that the respondent filed R.C.S. No. 35/1975 in the Court of the learned Civil Judge (J.D.) at Viramgam for obtaining possession of the suit premises inter-alia on the ground of arrears of rent describing herself to be a trustee of property of Bai Kashi in the title of the suit. It was asserted by her that the suit premises was let out to the petitioner-tenant at a monthly rent of Rs.15/- and that the same was outstanding and, therefore, a notice dated 2/1/1972 was required to be issued demanding the arrears of rent of Rs.600/-. As the defendant did not answer the demand in the notice, the suit was required to be filed. The petitioner-tenant contended that the plaintiff did not have right to bring the suit, that the demand of arrears of rent was not in accordance with the provisions of the Rent Act, that the suit deserved to be dismissed with cost and that the plaintiff was not admitted to be the trustee of the aforesaid trust (private trust) and that the rent was to be paid yearly at the rate of Rs.150/- per year. It was contended by the petitioner-defendant that the deceased Kanjibhai was collecting rent from him as an administrator of Ranchhodrayji temple of Viramgam and he had misappropriated the rental income for his personal use, that the rental income was to be used for public purpose and that the trust having not been registered under the provisions of the Bombay Public Trusts Act, no suit could be brought against the defendant. The learned trial Judge framed number of issues inter-alia with regard to whether the plaintiff had right to sue. He after recording evidence held that the plaintiff did not have right to sue and that the petitioner-tenant could not be said to be not ready and willing to pay the rent inasmuch as he had sought clarification in reply to the notice with regard to who was appointed as the trustee of the aforesaid trust. The suit was accordingly dismissed by the learned trial Judge with the result that the plaintiff filed aforesaid appeal before the appellate Court. Since the appeal was allowed and decree for eviction was passed, the petitioner-tenant is before this Court as stated above.

3. I have heard the learned advocates for the parties appearing before this Court. This petition can be and has to be disposed of by remanding the matter to the appellate Court under the following circumstances :-

4. It might be noticed from the judgment of the appellate Court that following points for determination

were raised :-

- (1) Whether the learned Judge has erred in concluding that appellant plaintiff has no right to sue?
- (2) Whether the learned Judge has erred in concluding that appellant plaintiff was not entitled to a decree for possession?
- (3) What order?

5. Answering the points for determination in favour of the plaintiff (respondent herein) the appellate Court passed decree for eviction against the petitioner-tenant. In so far as the first point for consideration was concerned, the appellate Court after hearing the parties and considering the provisions of sections 71 and 73 of the Indian Trust Act, came to the conclusion that the plaintiff-appellant, the heir of the only surviving trustee since deceased, could be treated as a de-facto trustee and, therefore, she had a right to file the suit. The appellate Court concluded that on account of the appellate Court's finding that the plaintiff had right to sue, the plaintiff was entitled to decree for eviction. Even though the trial Court was found to have not focussed its attention with regard to the question of arrears of rent, the appellate Court had itself ventured to decide the question only as a consequence of the appellate Court's finding on the first point. The appellate Court appears to have failed to consider the effect of issue raised by the appellant-tenant in reply to the notice. In that view of the matter, the appellate Court's attention is not focussed on the legal consequence of the disputes taken by the petitioner-tenant in the suit.

6. Besides, it has also been submitted before this Court that the defendant would be liable to a decree for eviction on a disclaimer of title. It has been submitted that the appellate Court has not framed an appropriate point for determination in that respect. However, the appellate Court has in terms concluded that simply because the petitioner-tenant had disputed the respondent's right to collect rent the petitioner could not be said to forfeit whole protection of the provisions of the Rent Act as is laid down in the decision of this Court in the case of Nanduben Dayalji v/s. Bhatiya Ranchhod Lalji and anr. reported in 18 G.L.R. page 140. Despite such a finding, it is not understandable how the decree for eviction has been passed particularly when the right to collect rent and sue stood upheld at the appellate level. It would, therefore, be necessary for the appellate Court to decide the question from the stand

point of readiness and willingness of the petitioner-tenant to pay rent to a rightful claimant. The effect of the evidence adduced before the trial Court vis-a-vis the provision of sec. 12(1) of the Rent Act speaking about the readiness and willingness of the petitioner-tenant to pay rent has got to be determined by framing an appropriate point for determination.

7. In the above view of the matter, the judgment and decree passed by the appellate Court directing the petitioner-tenant to vacate the suit premises and pay the arrears of rent as particularised in the ultimate order has got to be set out. The matter has to be remanded to the appellate Court for deciding the same afresh by raising all the points for determination and deciding the same in the context of the evidence which has been adduced in the suit. Order accordingly. The appellate Court after giving opportunity to both the parties of being heard in the appeal, shall decide the same afresh as aforesaid as expeditiously as possible, preferably within a period of six months from the date of receipt of writ of this direction. Rule made absolute only to the aforesaid extent.

Office to send the R & P back to the appellate Court immediately.

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